

threat to electric lines. *See id.* OCTA asserts that the solution is to require the electric owner to perform all trimming and allocate the cost equitably among all attachers on the pole through the carrying charge. *See id.*

Conclusion

In consideration of the comments we have received in the first phase of this proceeding, regarding the safety risk that could be posed by vegetation around communications lines in certain situations, we adopt a requirement that vegetation around communications lines poses no risk to the pole. Vegetation around communication lines poses no risk of burning, but in stormier environments could result in a strain that jeopardizes the pole and the electric lines. *See* AR 506 Coos-Curry Electric Cooperative, Inc., comments (May 2, 2006). Communication operators have the primary responsibility to ensure that vegetation around their lines do not threaten the poles or electric facilities. However, they may contract with electric supply operators to assume the responsibility for vegetation management. By allowing electric supply operators, who have immunity from liability under ORS 758.282 and ORS 758.284, to trim vegetation, the electric operators will be better able to gauge what poses a threat to their facilities, both the pole and their lines. The electric supply operator who trims vegetation on behalf of the communication operator may then bill the communication operator the actual cost of trimming around its lines.

Exemption for Idaho Power Company

Idaho Power seeks exemption from the rules considered in this phase of the AR 506 rulemaking. It notes that only four percent of its customers reside in Oregon, and less than five percent of its revenues come from Oregon customers. It has a similar percentage of its pole attachments in Oregon, and two-thirds of those Oregon attachments are with a single cable operator. The company asserts that all of the licensees on its Oregon poles also have attachments on its Idaho poles, and the attachments in Idaho often substantially outweigh the number of Oregon attachments. For this reason, the company believes that it makes more sense to have just one set of requirements apply to its contracts with these licensees, and that the requirements should be of the jurisdiction with the most attachments, that is, Idaho. *See* Idaho Power comments, 2-3 (Sept 28, 2006). Idaho Power compares its proposed exemption to that provided in the net metering statute, ORS 757.300(9). The company suggests language which would exempt “an electric utility serving fewer than 25,000 customers in Oregon that has its headquarters located in another state” from OAR 860-028-0020 through 860-028-0310. *See* Idaho Power comments, 7 (Oct 25, 2006).

Staff does not agree with Idaho Power’s request to be exempted from the Division 028 guidelines. *See* Staff comments, 3 (Nov 8, 2006). First, Staff does not believe that the Commission has the statutory authority to exempt Idaho Power from the rules. *See id.* Second, even if Idaho Power were exempt from the rules, the Commission would still have jurisdiction over any complaint brought under the rules. *See id.*

Conclusion

The pole attachment statutes do not give the Commission the authority to exempt Idaho Power from its requirements, as certain other statutes do. Utilities with fewer than 25,000 customers in this state are exempt from net metering requirements, under ORS 757.300(9), and from direct access requirements, under ORS 757.601(3). Based on those statutes, the Commission adopted OAR 860-038-0001, which also exempted utilities with fewer than 25,000 customers. In contrast, the pole attachment statutes have no such exemption, and the Commission is aware of no authority which would permit it to adopt such an exemption. However, any argument by Idaho Power as to why the presumptions adopted here should not apply to attachments on its poles will be considered if a complaint involving Idaho Power is filed. The exemption language proposed by Idaho Power is not adopted.

AR 510: SANCTIONS

Docket AR 510 was opened at the request of participants in AR 506. AR 506 phase II did not include reference to sanctions, and the participants believed that sanctions were an integral part of the contractual provisions considered in AR 506. For that reason, the docket was opened and processed in tandem with AR 506. AR 510 included rules on the duties of occupants and sanctions. The topics are discussed below.

Duties of Occupants

Verizon proposes indemnification clauses to protect occupants from any damages arising from a pole owner's correction of an occupant's safety violation. *See* AR 510 Verizon comments, 2-4 (Nov 17, 2006). In addition, Verizon proposes that in no instance should the time for correction be shortened to less than 60 days. *See id.*

The OJUA recommends adding three duties for occupants: requiring a pole occupant to immediately correct safety violations which cause imminent danger to life or property; requiring a pole occupant to correct certain violations which may pose a serious safety risk within 60 days, if requested by the pole owner; and requiring a pole occupant to respond to a pole owner's notification of a violation within 180 days. *See* OJUA comments, 2 (Oct 4, 2006). An occupant would have 60 days to submit a plan of correction, or 180 days to correct any violation. *See id.*

Conclusion

The OJUA's recommendations are part of its comprehensive proposal regarding sanctions, discussed below, and have been developed through a cooperative effort by the pole owners and occupants. We adopt its proposal.

Sanctions

OJUA took the lead in developing revisions to the sanction rules. In proposing revised rules, the OJUA sought to achieve four goals: (1) elimination of escalations and reductions to ensure predictability of sanction costs; (2) institution of a flat fee system, rather than a per-pole system of fees; (3) allowance of pole owners' cost recovery in circumstances where they are serving as the policing agent of the Commission; and (4) allowance of a percentage-based punitive sanction where it serves the public interest. *See* AR 510 OJUA comments, 1 (Oct 4, 2006).

With an eye towards these goals, the OJUA proposed the following modification to rules:

- ☐ OAR 860-028-0120: Sanction rules should require a pole occupant to immediately correct violations that pose an imminent danger to life or property, and allow a pole occupant 60 days to correct violations that pose a serious safety risk if requested by the pole owner. Further, an occupant would have 60 days to propose a plan of correction or 180 days to correct other violations.
- ☐ OAR 860-028-0130: The OJUA proposed a flat sanction of \$500 per pole for licensees without a contract, with an exception for participants with a recently expired contract that are participating in good faith efforts to negotiate a new contract.
- ☐ OAR 860-028-0140: Where a licensee does not have a permit, the OJUA recommends a sanction of five times the current annual rental fee if the violation is self-reported or found through a joint inspection process. An additional sanction of \$100 per pole will be levied if the violation is found by the pole owner.
- ☐ OAR 860-028-0150: For violation of duties regarding the installation and maintenance of attachments, OJUA recommends a flat sanction of \$200 per pole and allowing a pole owner to recover the actual costs of correcting a violation that could cause imminent danger to life or property or pose a safety risk to employees or the general public. OJUA also seeks to allow recovery of the cost of repair plus 15 percent if the licensee does not repair the violation within a particular period of time; that sanction would not apply if the licensee provided a plan of correction within 60 days or actually corrects the violation within 180 days. Finally, the proposed rule would allow the pole owner to immediately sanction a licensee for newly-constructed and newly-permitted attachments; this would be an exception to the 60-180 day "safe harbor" discussed above.

- ☐ OAR 860-028-0170: The OJUA recommended changes in the plans of correction: there should be 180 days for compliance after the receipt of a notice of violation; pole owners must consent to any plan amendments; and the occupant must report to the owner when it has finished corrections.
- ☐ OAR 860-028-0180: The OJUA recommends eliminating the reductions and escalations of sanctions, in support of the simplified proposal set forth above.
- ☐ OAR 860-028-0190: Pole owners should provide the pole number and the description of the pole's location in a notice of violation.
- ☐ OAR 860-028-0230: A rental reduction should not be permitted if the occupant has a pattern of delaying payment of sanctions more than 45 days after the billing date.

PacifiCorp urges the Commission to, for the most part, retain the sanction rules as they currently stand. The utility encourages simplification of the rules, and suggests "establishing a single, but stiff, flat rate penalty, in lieu of the progressive increases." PacifiCorp comments, 3 (Oct 4, 2006). The company does not support reduced penalties for self-reporting of violations or allowing an invoice to serve as a permit. *See* PacifiCorp comments, 10 (Nov 17, 2006). PacifiCorp also emphasizes that legacy violations should be treated differently from violations created by new construction; legacy violations may have been created by changes in the NESC, while new construction violations were created by faulty attachment. *See id.* at 11. When coupled with the new prioritization of repairs rule, OAR 860-024-0012, PacifiCorp argues that lenient treatment of new construction will force repairs to be delayed for years. *See id.* at 12. The utility states that management of a violations and sanctions process is an "administrative headache," and that it would prefer to not have to bill for sanctions. *See id.* at 13.

ORECA also does not wish to water down sanction rules that it asserts has reduced violations and brought its pole attachment program into improved compliance. *See* ORECA comments, 4 (Nov 17, 2006). Without significant financial incentives, ORECA is concerned that licensees will simply budget for sanctions rather than repair safety violations. *See id.* The statute requiring rental reductions for compliant licensees will stay in place, so ORECA recommends that sanctions not be diminished. *See id.*

Qwest continues to assert that the sanction rules, in which private parties impose and collect penalties on other private parties and have a strong self-interest to do so, are unlawful. *See* Qwest comments, 1 (Nov 17, 2006). Qwest contends that any penalties must be recovered in court, in the name of the state of Oregon, and for compensation of breaches in contract, not pre-set penalties that are unrelated to the harm actually caused by the violations. *See id.* at 2. Qwest also supports comments by Charter, which contends that sanctions violate state and federal policies in favor of

deployment of telecommunications technologies, and the comments by Embarq, which denounces sanctions as creating perverse incentives for pole management and producing an inappropriate revenue stream on which some pole owners rely. *See id.* at 2-3.

Embarq supports reform of the sanction rules and suggests additional modifications. *See* Embarq comments (Nov 3, 2006). Referring to duties of occupants, Embarq recommends that “emergency” situations be clarified, and that only “actual direct costs” be recoverable. The company recommends that certain sanctions be eliminated, such as failure to have a contract and failure to comply with other duties, arguing that there are already sanctions for unauthorized contacts, and that the Commission should narrowly delegate owners’ ability to sanction, within the authority given by the legislature. *See id.* Embarq further recommends that punitive sanctions not be permitted; instead, Embarq relies on an FCC decision which allowed up to five years of back rent, plus interest, for attachments without permits, but no additional punitive sanctions. *See id.* at 2.

OTA supports OJUA’s proposals for modifying the sanctions rules. *See* AR 510 OTA comments (Sept 28, 2006). However, OTA proposes that punitive sanctions should go to educational efforts and not the pole owner. *See id.* at 2. OTA also questions how sanctions are levied against pole owners, and where those funds are directed. *See id.* The association also prefers that all occupants and owners have an equal ability to sanction and be sanctioned. *See id.*

OCTA supports the OJUA’s efforts to reform the sanction rules. The initial sanction rules were intended to be used to reign in “rogue” attachers, not a source of profit-making for pole owners. *See* OCTA comments, 8 (Nov 17, 2006). To this end, OCTA supports OJUA’s September 11 draft, and expresses the concern that later efforts represent “backsliding” toward the flaws in the sanction rules currently in effect. *See id.* at 9-10. In particular, OCTA objects to the OJUA’s proposal for immediate sanctions on new construction. *See id.* The group also objects to sanctions that could result in pole owners recovering more than the allowable pole rental rate. *See id.* at 11.

Staff did not comment directly on proposed changes to the sanction rules, but “supports those changes to the Sanction rules that are clear and simple [and] that will improve the cooperation and coordination between owners and occupants and that will promote ‘safe and efficient poles, installation practices and rights of way.’” Staff comments, 1 (Nov 17, 2006).

Conclusion

We note Qwest’s arguments were considered and rejected by the Oregon Court of Appeals, *Qwest Corp. v. Public Utility Commission*, 205 Or App 370, *rev den*, 342 Or 46 (2006). The court held that the Commission acted within the scope of its delegated authority. *See id.* at 379. Further, the court held that private parties were permitted to levy the sanctions, within the parameters set forth by the Commission. *See id.* at 384-85. In its comments, Qwest continued to make similar arguments; the

Supreme Court denied review on November 21, 2006, after the close of the public comment period in this docket. For the reasons set forth by the Court of Appeals, we decline to revisit Qwest's arguments that the sanction rules are unlawful.

In addition, we decline to rely on federal decisions related to sanctions. We note that the sanctions provisions in Oregon stem from a law passed by the Oregon legislative assembly in 1999. *See* Or Laws 1999, ch 832. While the pole attachment statutes generally are based on the 1978 federal law, the sanctions law was passed separately and is not based on federal law. From this perspective, the FCC's decision on sanctions, *see Mile Hi Cable Partners, L.P. v. Public Service Company of Colorado*, 15 FCC Rcd 11450 (rel June 30, 2000), *pet for rev den*, *Public Serv. Co. v. FCC*, 328 F3d 675 (DC Cir 2003), provides interesting context, but we decline to follow FCC precedent on sanctions.

Pole owners have argued that sanctions are essential to prompting compliance with safety rules and contractual provisions on the part of pole occupants; pole occupants have asserted that sanctions rules have been abused as sources of revenue by pole owners. In modifying the sanctions rules, we attempt to navigate between these two extremes, allowing sanctions to provide an incentive for compliance without allowing for possible abuses.

For these reasons, we adopt the majority of the OJUA's proposal, which was the product of compromise and negotiation among members of varying industries. In so doing, we praise the proposal for balancing the concerns of pole owners and pole occupants through the use of grace periods and safe harbor provisions.

We modify the proposal as it relates to new construction, to provide a five day period to cure a violation before sanctions take effect. This brief grace period fits the basic framework of the OJUA proposal by providing a window to remedy inadvertent violations in new construction, while also requiring prompt compliance.

We commend the OJUA for coordinating comments from the various industries that have widely divergent views on sanctions and for proposing and revising their recommended rules throughout the process. Their advice, and willingness to broker a compromise, has been indispensable in this process, and we look forward to continued leadership by the OJUA in the future.

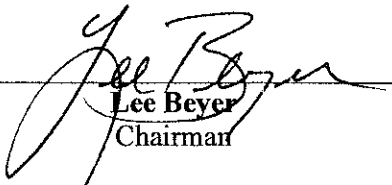
ORDER

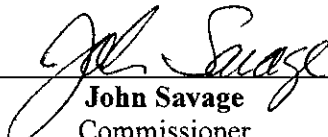
IT IS ORDERED that:


1. The rules attached as Appendix A are adopted for docket AR 506.
2. The rules attached as Appendix B are adopted for docket AR 510.

3. The rules set forth in Appendix B shall apply to all violations discovered on or after the date of this order. The previous version of the rules amended by Appendix B shall apply to all violations discovered before the date of this order.
4. The new rules and amended rules will become effective upon filing with the Secretary of State.
5. A new docket shall be opened to consider issues specific to wireless carriers.

Made, entered, and effective APR 10 2007.


Lee Beyer
Chairman


John Savage
Commissioner


Ray Baum
Commissioner



A party may petition the Commission for the amendment or repeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400.

Pole and Conduit Attachments

860-028-0020

Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

- (1) "Attachment" has the meaning given in ORS 757.270 and 759.650.
- (2) "Authorized attachment space" means the usable space occupied by one or more attachments on a pole by an occupant with the pole owner's permission.
- (3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year and that are publicly available to the greatest extent possible:
- (a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.
- (b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.
- (c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.
- (d) Taxes are total operating taxes, including, but not limited to, current, deferred, and "in lieu of" taxes, as a percent of net investment in total plant.
- (e) The cost of money is calculated as follows:
- (A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;
- (B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or
- (C) For a consumer-owned utility, the cost of money is equal to the utility's embedded cost of long-term debt plus 100 basis points. Should a consumer-owned utility not have any long-term debt, then the cost of money will be equal to the 10-year treasury rate as of the last traded day for the relevant calendar year plus 200 basis points.
- (24) "Commission pole attachment rules" mean ~~OAR 860-028-0110 through 860-028-0240~~ the rules provided in OAR Chapter 860, Division 028.
- (35) "Commission safety rules" ~~mean OAR 860-024-0010~~ has the meaning given in OAR 860-024-0001(1).
- (46) "Conduit" means any structure, or section thereof, containing one or more ducts, conduits, manholes, or handholes, ~~bolts, or other facilities~~ used for any telegraph, telephone, cable television, electrical, or communications conductors, or cables ~~rights of-~~

~~way~~, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

(57) "Consumer-owned utility" has the meaning given in ORS 757.270.

(8) "Duct" means a single enclosed raceway for conductors or cables.

(69) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(710) "Licensee" has the meaning given in ORS 757.270 or ORS 759.650. **"Licensee" does not include a government entity.**

(11) "Make ready work" means engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are non-recurring costs and are not contained in carrying charges.

(12) "Net investment" means the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) "Net linear cost of conduit" is equal to net investment in conduit divided by the total length of conduit in the system.

(814) "Notice" means written notification sent by mail, electronic mail, **telephonic facsimile, or telefax other means previously agreed to by the sender and the recipient.**

(915) "Occupant" means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(106) "Owner" means a public **utility**, telecommunications **utility**, or consumer-owned utility that owns or controls poles, ducts, conduits, ~~or~~ rights-of-way, **manholes, handholes, or other similar facilities.**

(147) "Pattern" means a **pattern-course** of behavior that results in a material breach of a contract, or permits, or in frequent ~~or serious~~ violations of OAR 860-028-0120.

(18) "Percentage of conduit capacity occupied" means:

(a) When inner ducts are used, the product of the quotient of the number "one," divided by the number of inner ducts, multiplied by the quotient of the number "one," divided by the number of ducts in the conduit [i.e., (1/Number of Inner Ducts ≥ 2)) x (1/Number of Ducts in Conduit)]; or

(b) When no inner ducts are used, the quotient of the number "one," divided by the number of ducts in the conduit [i.e., (1/Number of Ducts in Conduit)].

(19) "Periodic Inspection" means any inspection done at the option of the owner, including a required inspection pursuant to Division 024, the cost of which is recovered in the carrying charge. Periodic inspections do not include post construction inspections.

(20) "Permit" means the written or electronic record by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

(21) "Pole" means any pole that carries distribution lines and that is owned or controlled by a public utility, telecommunications utility, or consumer-owned utility.

(22) "Pole cost" means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.

(23) "Post construction inspection" means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

(24) "Preconstruction activity" means engineering, survey and estimating work required to prepare cost estimates for an attachment application.

(25) "Public utility" has the meaning given in ORS 757.005.

(26) "Serious injury" means "serious injury to person" or "serious injury to property" as defined in OAR 860-024-0050.

(27) "Service drop" means a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility the building or structure being served.

(28) "Special inspection" means an owner's field visit made at the request of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(29) "Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.

(30) "Surplus ducts" means ducts other than:

(a) those occupied by the conduit owner or a licensee;

(b) an unoccupied duct held for emergency use; or

(c) other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

(31) "Telecommunications utility" has the meaning given in ORS 759.005.

(32) "Threshold number of poles" means 50 poles, or one-tenth of one percent (0.10 percent) of the owner's poles, whichever is less, over any 30 day period.

(33) "Unauthorized attachment" means an attachment that does not have a valid permit and a governing agreement subject to OAR 860-028-0120.

(34) "Usable space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0110 & 860-034-0810

860-028-0050

General

(1) OAR Chapter 860 Division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon.

(2) OAR Chapter 860, Division 028 is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(3) With the exceptions of OARs 860-028-0060 through 860-028-0080, 860-028-0115, and 860-028-0120, parties may mutually agree on terms that differ from those in this Division. In the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this Division as presumptively reasonable. If a dispute is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this Division to show the deviation is just, fair and reasonable.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 757.290, 759.045 & ORS 759.650 - 759.675

Hist.: NEW

860-028-0060

Attachment Contracts

(1) Any entity requiring pole attachments to serve customers should be allowed to use utility poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities jointly, as much as practicable.

(2) To facilitate the joint use of poles, entities must execute contracts establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120. Government entities are not required to execute contracts.

(3) Parties must negotiate pole attachment contracts in good faith.

(4) Unless expressly prohibited by contract, the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 757.290, 759.045 & 759.650 - 759.675

Hist.: NEW

860-028-0070

Resolution of Disputes for Proposed New or Amended Contractual Provisions

- (1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 757.282, 759.655, 759.660, or 759.665.
- (2) In addition to the generally applicable hearing procedures contained in OAR Chapter 860, Divisions 011 through 014, the procedures set forth in this rule shall apply to a complaint that an existing or proposed contract is unjust and unreasonable.
- (3) The party filing a complaint under this rule is the “complainant.” The other party to the contract, against whom the complaint is filed, is the “respondent.”
- (4) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.
- (5) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or ORS 759.660.
- (6) The complaint must contain each of the following:
- (a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since the date of receipt of the request and indicate that the parties have been unable to resolve the dispute.
- (b) A statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable.
- (c) A description of the complainant's position on the unresolved provisions.
- (d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.
- (e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:
- (A) In cases in which the Commission's review of a rate is required, the complaint must provide all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.
- (B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.
- (C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee must include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.
- (D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under paragraph (6)(c)(B) of this rule.

(7) Within 30 calendar days of receiving a copy of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.

(8) If the Commission determines after a hearing that a rate, term or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term or condition.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 757.290, 759.045 & 759.650 - 759.675

Hist.: NEW

860-028-0080

Costs of Hearing in Attachment Contract Disputes

(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order must also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost. Upon request of a party, and no more than once every 60 days, the Commission will provide to the parties the costs incurred to date in the proceeding.

(3) The Joint-Use Association is not considered a party for purposes of this rule when participating in a case as an advisor to the Commission.

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in allocating costs:

(a) Whether the party unreasonably burdened the record or delayed the proceeding;

(b) Merits of the party's positions throughout the course of the proceeding; and

(c) Other factors that the Commission deems relevant.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.279 & 759.660

Hist.: NEW

860-028-0100

Application Process for New or Modified Attachments

(1) As used in this rule, "applicant" does not include a government entity.

(2) An applicant requesting a new or modified attachment must submit an application providing the following information in writing or electronically to the owner:

- (a) Information for contacting the applicant.
- (b) The pole owner may require the applicant to provide the following technical information:
 - (A) Location of identifying pole or conduit for which the attachment is requested;
 - (B) The amount of space requested;
 - (C) The number and type of attachment for each pole or conduit;
 - (D) Physical characteristics of attachments;
 - (E) Attachment location on pole;
 - (F) Description of installation;
 - (G) Proposed route; and
 - (H) Proposed schedule for construction.
- (3) The owner must provide written or electronic notice to the applicant within 15 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.
- (4) Upon receipt of a completed application, an owner must reply in writing or electronically to the applicant as quickly as possible and no later than 45 days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.
- (a) An approval will be valid for 180 calendar days unless extended by the owner.
- (b) The owner may require the applicant to provide notice of completion within 45 calendar days of completion of construction.
- (c) If the owner approves an application that requires make ready work, the owner must provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.
- (d) If the owner denies the application, the owner must state in detail the reasons for its denial.
- (e) If the owner does not provide the applicant with notice that the application is approved, denied, or conditioned within 45 days from its receipt, the applicant may begin installation. Applicant must provide notice prior to beginning installation. Commencement of installation by the occupant will not be construed as completion of the permitting process or as final permit approval. Unpermitted attachments made under this section are not subject to sanction under OAR 860-028-0140.
- (5) If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work must be completed in a timely manner and at a reasonable cost. Where this work requires more than 45 days to complete, the parties must negotiate a mutually satisfactory longer period to complete the make ready work.

(6) If an owner cannot meet the time frame for attachment established by this rule, preconstruction activity and make ready work may be performed by a mutually acceptable third party.

(7) If an application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 757.290, 759.045 & 759.650 - 759.675

Hist.: NEW

860-028-0110

Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

~~(2) In this rule:~~

~~(a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding.~~

~~(b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner.~~

~~(c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.~~

~~(d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment.~~

~~(e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level.~~

~~(32) The A-disputed pole attachment rental rate per foot will be is computed by taking multiplying the pole cost times by the carrying charge and then dividing the product by the usable space per pole. The rental rate per pole is computed as the rental rate per foot times multiplied the portion of the usable space occupied by the licensee's authorized attachment space.~~

~~(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.~~

- ~~(5) The minimum usable space occupied by a licensee's attachment is one foot.~~
- ~~(63) The rental rates referred to referenced in sections (23 and 4) of this rule do not cover include the costs of special inspections or permit application processing, preconstruction activity, post construction inspection, make ready, change out, and rearrangement work, and the costs related to unauthorized attachments. Charges for those activities not included in the rental rates shall will be based on actual costs, (including administrative) costs, and will be charged in addition to the rental rate.~~
- (4) Authorized attachment space for rental rate determination must comply with the following:
- (a) The initial authorized attachment space on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.
- (b) For each attachment permit, the owner must specify the authorized attachment space on the pole that is to be used for one or more attachments. This authorized attachment space will be specified in the owner's attachment permit.
- (5) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.
- (6) A communication operator has primary responsibility for trimming vegetation around its communication lines in compliance with OAR 860-028-0115(7) and 860-028-0120(7). If the communication operator so chooses, or if the communication operator is sanctioned or penalized for failure to trim vegetation in compliance with OAR 860-028-0115(7) or OAR 860-028-0120(7), the electric supply operator may trim the vegetation around communication lines that poses a foreseeable danger to the pole and electric supply operator's lines. If the electric supply operator trims the vegetation around communication lines, it shall do so contemporaneously with trimming around its own facilities. If the electric supply operator is the pole owner, it may bill the communication operators for the actual cost of trimming around the communication lines. If the electric supply operator is the pole occupant, it may offset its pole rent by the vegetation trimming cost.
- (7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 60 days prior to the effective date of the change. This section will become effective on January 1, 2008.
- ~~(7) Licensees shall report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR 860-028-0120. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.~~
- ~~(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee~~

~~for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.~~

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0055 & 860-034-0360

860-028-0115

Duties of Structure Owners

- (1) An owner must install, maintain, and operate its facilities in compliance with Commission Safety Rules.**
- (2) An owner must establish, maintain, and make available to occupants its joint use construction standards for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.**
- (3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and its occupants.**
- (4) An owner must immediately correct violations that pose imminent danger to life or property. In the event that a pole occupant performs the corrections, a pole owner must reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section must not exceed the actual cost of corrections.**
- (5) An owner must respond to a pole occupant's request for assistance in making a correction within 45 days.**
- (6) An owner must ensure the accuracy of inspection data prior to transmitting information to the pole occupant.**
- (7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.**

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 757.290, 759.045 & 759.650 - 759.675

Hist.: NEW

Conduit Attachments

860-028-0310

Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

(2) ~~As used in this rule:~~

(a) ~~“Annual Carrying Charge” shall be equal to the return on investment authorized by the Commission in the conduit owner’s most recent rate proceeding times the conduit cost.~~

(b) ~~“Annual Operating Expense” means annual operating maintenance, administrative, general, depreciation, income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.~~

(c) ~~“Conduit Cost” means the depreciated original installed cost, on a per-duct basis, of the section of conduit occupied by the licensee.~~

(d) ~~“Duct” means a single enclosed raceway for conductors or cable.~~

(e) ~~“Surplus Ducts” means ducts other than those occupied by the conduit owner or a prior licensee, one unoccupied duct held as an emergency use spare, and other unoccupied ducts that the owner reasonably expects to use within the next 18 months.~~

(3) ~~The~~ **A disputed** conduit rental rate **per linear foot will be** computed by **adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.**

(4) ~~A licensee occupying part of a duct shall be~~ deemed to occupy the entire duct.

(5) ~~Licensees shall~~ **must** report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate ~~shall~~ **will** apply from the date the conduit owner last inspected the conduit in dispute. The last inspection ~~date shall be~~ deemed to be no more than ~~three~~ **five** years before the unauthorized attachment is discovered. The conduit owner also ~~shall~~ **may** charge for any expenses it incurs as a result of the unauthorized attachment.

(6) ~~The conduit owner shall~~ **must** give a licensee 18 months’ notice of its need to occupy licensed conduit and ~~shall~~ **will** propose that the licensee take the first feasible action listed:

- (a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner's space needs;
- (b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner's space needs;
- (c) Vacate ducts that are no longer surplus;
- (d) Construct and maintain sufficient new conduit to meet the conduit owner's space needs.

(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates must be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.
(7) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

~~**(7) When two or more licensees occupy a section of conduit, the last licensee to occupy the conduit shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all licensees shall bear the increased cost.**~~

~~**(8) All conduit attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the conduit owner and the licensee. A conduit owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the conduit owner for any fines, fees, damages, or other costs the licensee's attachments cause the conduit owner to incur.**~~

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01.

Renumbered from 860-022-0060 & 860-034-0370

860-028-0120

Duties of Pole Occupants

(1) Except as provided in sections (2) and (3) of this rule, a pole occupant attaching to one or more poles of a pole owner **shall must**:

- (a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;
- (b) Have a permit issued by the pole owner for each pole on which the pole occupant has attachments;
- (c) Install and maintain the attachments in compliance with the written contracts required under subsection (1)(a) of this rule and with the permits required under subsection (1)(b) of this rule; and
- (d) Install and maintain the attachments in compliance with Commission safety rules.

(2) A pole occupant that is a government entity is not required to enter into a written contract required by subsection (1)(a) of this rule, but when obtaining a permit from a pole owner under subsection (1)(b) of this rule, the government entity **shall must** agree to comply with Commission safety rules.

(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:

- (a) Apply for a permit within seven days of installation;
- (b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and
- (c) Install the service drop in compliance with Commission safety rules.

(4) A pole occupant must repair, disconnect, isolate, or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery. If the pole owner performs the corrections, a pole occupant must reimburse the pole owner for the actual cost of correction. Reimbursement charges imposed under this section must not exceed the actual cost of correction.

(5) Upon receipt of a pole owner's notification of violation, a pole occupant must respond either with submission of a plan of correction within 60 calendar days or with a correction of the violation within 180 calendar days.

(a) If a pole occupant fails to respond within these deadlines, the pole occupant is subject to sanction under OAR 860-028-0150(2).

(b) If a pole occupant fails to respond within these deadlines and if the pole owner performs the correction, the pole occupant must reimburse the pole owner for the actual cost of correction attributed to violations caused by the occupant's non-compliant attachments. Reimbursement charges imposed under this section must not exceed the actual cost of correction attributed to the occupant's attachments.

(6) A pole occupant must correct a violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected within that time to alleviate a significant safety risk to any operator's employees or a potential risk to the general public. A pole occupant must reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments made under this section if:

- (a) The owner provides reasonable notice of the violation; and**

(b) The occupant fails to respond within timelines set forth in the notice.
(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820

860-028-0130

Sanctions for Having No Contract

(1) Except as provided in sections (2) ~~and (3)~~ of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-~~0120(1)(a)~~**0060(2)**. The sanction may ~~be the higher of:~~ **not exceed \$500 per pole.**

~~(a) \$500 per pole; or~~

~~(b) 60 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

~~(3) This rule does not apply to:~~

~~(a) a pole occupant that is a government entity; or~~

~~(b) A pole occupant operating under an expired or terminated contract and participating in good faith efforts to negotiate a contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or~~

~~(c) A pole occupant operating under a contract that is expired if both pole owner and occupant are unaware that the contract expired and both carry on business relations as if the contract terms are mutually-agreeable and still applicable.~~

~~(3) Sanctions imposed pursuant to this rule will be imposed no more than once in a 365 day period.~~

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830

860-028-0140

Sanctions for Having No Permit

(1) Except as provided in sections ~~(2)~~ ~~and~~ (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in OAR 860-028-0120(3). ~~The sanction may be the higher of:~~

~~(a) \$250 per pole; or~~

~~(b) 30 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

(2) Sanctions imposed under this rule may not exceed:

(a) Five times the current annual rental fee per pole if the violation is reported by the occupant to the owner and is accompanied by a permit application or is discovered through a joint inspection between the owner and occupant and accompanied by a permit application; or

(b) \$100 per pole plus five times the current annual rental fee per pole if the violation is reported by the owner in an inspection in which the occupant has declined to participate.

(3) Sanctions imposed under pursuant to this rule may be imposed no more than once in a 60 day period.

(4) A pole owner may not impose new sanctions for ongoing violations after the initial 60 day period if:

(a) The occupant filed a permit application in response to a notice of violation; or

(b) The notice of violation involves more than the threshold number of poles, as defined in OAR 860-028-0020(32), and the parties agree to a longer time frame to complete the permitting process.

(35) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840

860-028-0150

Sanctions for Violation of Other Duties

~~(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c), (1)(d), or (3). The sanction may be the higher of: Sanctions imposed for these violations may not exceed (a) \$200 per pole; or,~~

~~(b) Twenty times the pole owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 70 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

(2) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(5). Sanctions imposed under this section must not exceed 15 percent of the actual cost of corrections incurred under OAR 860-028-0120(5).

(3) Sanctions and charges imposed under sections (1) and (2) of this rule do not apply if:

(a) The occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 calendar days of receipt of notification of a violation; or

(b) The occupant corrects the violation and provides notification of the correction to the owner within 180 calendar days of receipt of notification of the violation.

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions and deadlines set forth in that plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in section (3) of this rule, a pole owner must notify the occupant immediately of any violations occurring on attachments that are newly-constructed and newly-permitted by the occupant or are caused by the occupant's transfer of currently-permitted facilities to new poles. The occupant must immediately correct the noticed violation. If the violation is not corrected within five days of the notice, the pole owner may immediately impose sanctions.

(a) Sanctions may be imposed under this section only within 90 calendar days of the pole occupant providing the pole owner with a notice of completion.

(b) Sanctions under this section will not be charged to the pole occupant if the violation is discovered in a joint post-construction inspection between the pole owner and pole occupant, or their respective representatives, and is corrected by the pole occupant within 60 calendar days of the joint post-construction inspection or within a mutually-agreed upon time.

(c) If the pole occupant performs an inspection and requests a joint post construction inspection, the pole owner's consent to such inspection must not be unreasonably withheld.

(36) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850

860-028-0170

Time Frame for Securing Reduction in Sanctions Plans of Correction

~~(1) Except as provided in section (2) of this rule, a pole owner shall reduce the sanctions provided in these rules, if the pole occupant:~~

~~(a) On or before the 60th day of its receipt of notice, complies with OAR 860-028-0120 and provides the pole owner notice of its compliance; or~~

~~(b) On or before the 30th day of its receipt of notice, submits to the pole owner a reasonable plan of correction, and thereafter, complies with that plan, if the pole owner accepts it, or with another plan approved by the pole owner.~~

~~(2) Notwithstanding section (1) of this rule, a pole owner may, if there is a critical need, or if there is no field correction necessary to comply with OAR 860-028-0120, shorten the times set forth in section (1). A pole occupant that disagrees with the reduction must request relief under OAR 860-028-0220 prior to the expiration of the~~

~~shortened time period, or within seven days of its receipt of notice of the reduction, whichever is later.~~

~~(3)~~ A plan of correction **shall**must, at a minimum, set out:

(a) Any disagreement, as well as the facts on which it is based, that the pole occupant has with respect to the violations alleged by the pole owner in the notice;

(b) The pole occupant's suggested compliance date, as well as reasons to support the date, for each pole that the pole occupant agrees is not in compliance with OAR 860-028-0120.

~~(4)(2)~~ If a pole occupant suggests a compliance date of more than ~~60~~180 days following receipt of a notice of violation, then the pole occupant must show good cause.

~~(5)(3)~~ Upon its receipt of a plan of correction that a pole occupant ~~has submitted~~submits under ~~subsection (1)(b) of this rule~~OAR 860-028-0150(3)(a), a pole owner **shall**must give notice of its acceptance or rejection of the plan .

~~(a) If the pole owner accepts the plan, then the pole owner shall reduce the sanctions to the extent that the pole occupant complies with OAR 860-028-0120 and provides the pole owner notice of its compliance, on or before the dates set out in the plan;~~

~~(b)~~ If the pole owner rejects the plan, then it **shall**must set out all of its reasons for rejection and, for each reason, **shall**must state an alternative that is acceptable to it;

~~(c) Until the pole owner accepts or rejects a plan of correction, the pole occupant's time for compliance with OAR 860-028-0120 is tolled.~~

~~(b)~~ The pole occupant's time for compliance set forth in the plan of correction begins when the plan of correction is mutually agreed upon by both the pole owner and the occupant.

~~(d)~~ (c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant **shall**must carry out that part of the plan.

~~(d)~~ If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a submitted plan amendment.

~~(4)~~ Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within the plan.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759

Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - 757.290, ORS 759.045 & 759.650 - 759.675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870

860-028-0180

Progressive Increases in Sanctions~~Removal of Occupant Pole Attachments~~

~~(1) Except as provided in sections (2) and (3) of this rule, if the pole occupant fails to comply with OAR 860-028-0120 within the time allowed under OAR 860-028-0170, then the pole owner may sanction the pole occupant 1.5 times the amount otherwise due under these rules.~~